SUPREME COURT, U. S.

APPENDIX

FILED
FEB 10 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5485

ROBERT JOHNSON,

Petitioner,

—v.—

MISSISSIPPI

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MISSISSIPPI

PETITION FOR CERTIORARI FILED JULY 2, 1970
CERTIORARI GRANTED JANUARY 11, 1971

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ROBERT JOHNSON

v.

MISSISSIPPI

(Circuit Court of Grenada County, Mississippi)

ORGANIZATION OF THE COURT

STATE OF MISSISSIPPI
COUNTY OF GRENADA — JANUARY TERM, 1967

BE IT REMEMBERED, That a regular term of the Circuit Court of Grenada County, Mississippi was begun and held at the Courthouse in the City of Grenada, Grenada County, Mississippi, there being present as officers of said court the Honorable Marshall Perry, Circuit Judge of the Fifth Judicial District of Mississippi, presiding; Honorable Chatwin M. Jackson, Jr., District Attorney of said district; Suggs Ingram, Sheriff of said county; Mrs. Aline B. Worsham, Circuit Clerk of said County, and W. W. DeLoach, Official Court Reporter of said district.

Court being duly opened according to law by proclamation of the Sheriff, the transaction of business was begun, when the following proceedings were had, to-wit:

IN THE CIRCUIT COURT
OF GRENADA COUNTY, MISSISSIPPI

JANUARY TERM—1967

Cause No. 3581

IN RE: ROBERT JOHNSON

PETITION

TO THE HONORABLE CIRCUIT COURT OF GRENADA COUNTY, MISSISSIPPI:

Comes now the State of Mississippi acting by and through Chatwin M. Jackson, District Attorney for the fifth Circuit Court District of which Grenada County is a part and would respectfully show unto the Court the following:

That on the morning of January 23, at approximately 9:05 A. M., the said Robert Johnson entered the Court room of the Grenada County Courthouse at a time when Circuit Court had been open and was in session. That at the time said Johnson entered the Court room the Circuit Judge had previously seated all prospective jurors in the front rows nearest the bench and had told all persons present not to walk in front of the Jury, but to proceed along the side wall and go behind the Jury to take their seats wherever they wished to in the Court room when Robert Johnson entered the Court room. Mr. Aaron Lott, who was then acting as a Court room deputy told said Johnson, who had then walked in front of the Jury, to turn around and go behind to the back. This was observed by the Sheriff, Suggs Ingram, who thereupon immediately walked over to where Johnson and Mr. Lott were standing and the said Sheriff also told Robert Johnson to go around behind the Jury. Whereupon Robert Johnson said in a loud and offensive voice, "what the hell do you mean go around". At that stage the Sheriff and Deputy Sheriff, Howard Hayward seized

Robert Johnson and immediately carried him before the Circuit Judge, Marshall Perry, and related to the Judge what had transpired. The Judge then instructed the Sheriff to arrest Robert Johnson for contempt of Court and made this announcement in open Court in such a tone of voice that it could be heard by all spectators. The Circuit Judge thereafter requested that the District Attorney and the County Prosecuting Attorney file a petition citing and requiring Robert Johnson to show cause why he should not be punished for a contempt of the Circuit Court of Grenada County, Mississippi.

Respectfully submitted.

JIM MCRAE CRISS
JIM MCRAE CRISS
Grenada County
Prosecuting Attorney

CHATWIN M. JACKSON
CHATWIN M. JACKSON
District Attorney

Sworn to and subscribed before me on this the 24th day of January, 1967.

MRS. ALINE B. WORSHAM
Circuit Clerk

[Filed Jan. 24, 1967, Mrs. Aline B. Worsham, Circuit Clerk, By Florence Rogers, D.C.]

IN THE CIRCUIT COURT
OF GRENADA COUNTY, MISSISSIPPI

Cause No. 3581

IN RE: ROBERT JOHNSON

FIAT

TO THE CIRCUIT CLERK OF GRENADA COUNTY, MISSISSIPPI:

You are hereby directed to issue process directed to any lawful officer of Grenada County, Mississippi, directing said officer to command Robert Johnson to be and appear before the Circuit Court of Grenada County, Mississippi at 9 o'clock A. M. on February 1st, 1967, then and there to show cause, if any he can, why he should not be found in Contempt of this Court.

So Ordered and Adjudged, on this the 24 day of January, 1967.

MARSHALL PERRY
Circuit Judge

[Filed Jan. 24, 1967, Mrs. Aline B. Worsham, Circuit Clerk, By Florence Rogers, D.C.]

IN THE CIRCUIT COURT
OF GRENADA COUNTY, MISSISSIPPI

STATE OF MISSISSIPPI

vs

ROBERT JOHNSON

MOTION TO RECUSE

Comes now the defendant in the above captioned case and moves that the Judge now presiding, the Honorable Marshall Perry, recuse himself from the trial of this cause on the following grounds.

1. The defendant herein is an active Negro civil rights worker, which fact is, upon information and belief, well known to Judge Perry.

2. That on January 23, 1967, the first day of the January, 1967 term of Court, the Honorable Marshall Perry, upon information and belief, those selected to constitute the present venire, in a manner which shows:

a. That Judge Perry is personally prejudiced against the defendant and against the civil rights organizations he represents.

b. That Judge Perry is personally prejudiced against the lawyers' organization defending Mr. Johnson, namely the Lawyers' Committee For Civil Rights Under Law.

3. That on January 23, 1967, Judge Perry witnessed the arrest of the defendant in his courtroom and ordered the County Attorney to prepare a petition for Contempt of Court against the defendant, for acts allegedly committed on that date in the Grenada County Court House, which resulted in the arrest and jailing of defendant.

4. In support of paragraph two herein contained, please find attached two affidavits containing part of the charge given by the Honorable Marshall Perry to the Grand Jury for the January, 1967 term of the Circuit

Court, and part of the charge given by the Honorable Marshall Perry to the Grand Jury for the July, 1966 term of the Circuit Court.

5. That unless the Honorable Marshall Perry does recuse himself, then this defendant will be deprived of his right to a fair and impartial trial under the Fourteenth Amendment to the United States Constitution and Section Fourteen of the Mississippi Constitution.

Dated: January , 1967.

Respectfully submitted

L. LACKEY ROWE
L. LACKEY ROWE, JR.

[Filed Jan. 27, 1967, Mrs. Aline B. Worsham, Circuit Clerk, By Florence Rogers, D.C.]

(Circuit Court of Grenada County, Mississippi)

AFFIDAVIT OF B. E. BERGESEN, III

STATE OF MISSISSIPPI)
) SS
COUNTY OF HINDS)

AFFIDAVIT IN SUPPORT OF DEFENDANTS' MOTION MADE BEFORE THE CIRCUIT COURT OF GRENADA COUNTY, TO RECUSE THE HONORABLE MARSHALL PERRY

B. E. Bergesen, III, being duly sworn, deposes and says:

1. I am an attorney for the Lawyers' Committee for Civil Rights under Law, 233 North Farish Street, Jackson, Mississippi. I am a member of the United States District Court for the District of Columbia, the United

States District Court for the Northern District of Mississippi, the United States Court of Appeals for the Fifth Circuit, and the United States Court of Appeals for the District of Columbia Circuit.

2. On Monday, January 23, 1967, I was present in the Circuit Court of Grenada County during the part of the charge given by the Honorable Marshall Perry to the Grand Jury for the January, 1967 term of the Circuit Court, said charge being given upon information and belief, in the presence of most, if not all, of the jurors constituting the present venire. Said charge was made in open Court, before members of the public, presumably citizens of the City and County of Grenada. The following is an account of that portion of the charge which dealt with the Lawyers' Committee for Civil Rights under Law. It does not purport to be a quotation of the exact words used by Judge Perry but rather sets out the substance of these remarks as reconstituted from notes which I made during the charge. All of that portion of the charge dealing with the Lawyers' Committee for Civil Rights under Law, as set forth in substance below, was made in my presence and was heard by me. The substance of that portion of the charge is as follows:

(a) Recently there have been some lawyers who have come into the state from outside the state to assist and aid pro-socialist and pro-communist agitators. They have engaged in the unauthorized practice of law, and have solicited business.

(b) One group of such outside lawyers has a letterhead reading "Lawyers' Committee for Civil Rights under Law" and has an address on North Farish Street in Jackson. There are two other such groups which also have North Farish Street addresses, but the first one is apparently the most active, at least in this area. They have made no effort to adhere to the statutes or legal ethics. In particular, they have not bothered to comply with Sections 8682 and 8666 of the Mississippi Code.

(c) These groups have set up offices in Jackson, although claiming to be non-resident lawyers. They know

little of Mississippi practice and procedure and nothing of legal ethics. They have openly, illegally, and notoriously solicited business by use of agents and panderers.

(d) One group claimed to represent a man in Kosciusko who was charged with grand larceny. However, the man swore in court that he had never employed them and didn't want their services.

(e) These lawyers will go to jailers and seek to interview and represent accused persons, especially Negroes. When they come, I hope you run them out or make them show evidence of up-to-date permits to practice law in this state. I hope Sheriffs won't let them use jails to agitate. If you treat them courteously then they only take advantage of you.

(f) Most of these lawyers seem to have Washington or New York addresses, and about 90% are Jews. In saying this I do not mean to deprecate Jews; I am just observing the facts. These agitators are not concerned with the welfare of the Negro, they are interested only in what they can get out of it. They wish only to enrich themselves. They stay in a community only as long as it is financially profitable. After that they leave, without regard to the people who have been depending on them.

3. The judge also stated that there had been a number of threats and acts against the local Negroes who would not co-operate with the civil rights organizations, were scared not to and scared to report fully threats against them to local authorities.

4. L. Lackey Rowe, Jr., the attorney for the aforesaid defendants, appeared on their behalf in the Circuit Court of Grenada County today in open court on the first day of the January term with Judge Perry presiding. Mr. Rowe is intending to represent the aforesaid defendants at their criminal trials and in the hearing on said defendants' motion to quash the jury venire, filed today. Mr. Rowe is employed by the aforesaid Lawyers' Committee for Civil Rights under Law, a fact of association which, upon information and belief, Judge Perry is throughly familiar with. Miss Marion Wright

is to associate with Mr. Rowe in the handling of the criminal trials of said defendants. Miss Wright is an attorney and is one of the civil rights lawyers on North Farish Street in Jackson to whom Judge Perry referred.

B. E. BERGESEN, III
B. E. BERGESEN, III

Sworn to and subscribed before me
me this 23rd day of January, 1967.
SARAH B. SMITH
Notary Public
My commission Expires Aug. 31, 1970

[Filed Jan. 27, 1967, Mrs. Aline B. Worsham, Circuit Clerk, By Florence Rogers, D.C.]

IN THE CIRCUIT COURT
OF GRENADA COUNTY, MISSISSIPPI

AFFIDAVIT OF PETER G. EIKENBERRY

No. 3500

STATE OF MISSISSIPPI

—v—

JAMES BULLOCH

AFFIDAVIT

PETER G. EIKENBERRY, being duly sworn deposes and says:

On July 25, 1966 I was present in the Circuit Court of Grenada County when the Honorable Marshall Perry addressed the Grand Jury for the July, 1966 term of this Circuit Court in the presence of other prospective

jurors including, on information and belief, most of the jurors constituting the present venire.

The following is an account of the substance of his remarks as reconstituted from my notes taken during the address and supplemented by my recollection:

A turmoil has visited on our State through no fault of our own, attended by arrogant demands, threats of burning of courthouses, etc. The people with the so-called march are looking for places to cause violence and there is an ugly communistic overtone to the whole situation.

When I was a boy on the farm, if I saw a snake I took a club, hit it in the head and killed it. If I didn't have a club I walked away from the snake. I never negotiated with him. You can't negotiate with a snake.

I would like to praise all of the police and the merchants. Negroes have been threatened and, in some instances, beaten by agitators. That is the reason they are staying away from the stores. These people are Twentieth Century "Carpetbaggers." While we are fighting communists in Viet Nam, the federal government is building a strong communistic party in our midst. Senator Eastland has named eleven communists who took part in the "March." There are many more and were many more in that march.

The "March" got active support from "Ole Miss" and Millsaps. Senator Billboe was the first to point out the communistic threat at those two colleges.

Agents of the Department of Justice are ready to bribe and purchase testimony. Examples are the recent Alabama cases.

I am not here to promote the Klan, but the NAACP, CORE, SNCC and others similar communistically led and infiltrated organizations have caused more bloodshed than the Klan has caused in Mississippi in a hundred years.

These people don't know, but they will find out, that there is no soft spot in Grenada.

The Court recommends that:

1. County officials make all efforts to get those people off the rolls that were fraudulently registered during the

"March." There are many reported instances of double and triple registration.

2. County and City employees have joined in the activity. They have missed work to participate. Several names have been given to the Grand Jury. I recommend a thorough investigation. I urge County officials to discharge employees who have neglected work to participate in these illegal activities.

3. There should be an investigation into the part played by the employees of "Head Start." It is reported that employees of Head Start followed the "March" and engaged in its activities. Head Start activities are a brooding place for criminal and subversive activities.

4. You should investigate the threats to Negroes of Grenada. An integrationist is a person who is ashamed of his race. I urge that everyone make a special effort to buy from our merchants.

5. I recommend that the police keep on hand riot gear, that they be trained in its use.

6. I recommend that the police purchase six or seven police dogs.

7. I recommend that the rules for the operation of the court house be published and that they be enforced.

Once again, I wish to thank the police and the State Highway Patrolmen who must bear a portion of their expenses themselves.

I caution any citizen from taking the law into his own hands. The police should enforce the law.

PETER G. EIKENBERRY

Sworn to and subscribed to before
me this 27th day of July, 1966.
MRS. ALINE B. WORSHAM
Notary Public
My commission expires: 1st Monday January, 1968

[Filed July 27, 1966, Mrs. Aline B. Worsham, Circuit Clerk]

[Filed Jan. 27, 1967, Mrs. Aline B. Worsham, Circuit Clerk, By Florence Rogers, D.C.]

(Circuit Court of Grenada County, Mississippi)

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

No. 3581

STATE OF MISSISSIPPI, PLAINTIFF-RESPONDENT

—*v*—

ROBERT JOHNSON, DEFENDANT-PETITIONER

NOTICE OF REMOVAL

TO: CHATWIN JACKSON, ESQ.
District Attorney
Grenada County Courthouse
Grenada, Mississippi

HON. MARSHALL PERRY
Judge
Grenada County Circuit Court
Grenada, Mississippi

PLEASE TAKE NOTICE that the attached Petition for Removal was filed on February 1, 1967, in the United States District Court for the Northern District of Mississippi, Western Division.

February 1, 1967.

Respectfully submitted,

DENISON RAY
DENISON RAY
B. E. BERGESEN, III
233 North Farish Street
Jackson, Mississippi
Attorney for
Defendant-Petitioner

[Filed Feb. 1, 1967, Mrs. Aline B. Worsham, Circuit Clerk, By Florence C. Rogers, D.C.]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

No.

STATE OF MISSISSIPPI, PLAINTIFF-RESPONDENT

—*v*—

ROBERT JOHNSON, DEFENDANT-PETITIONER

PETITION FOR REMOVAL

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1443 (1), as construed by the Supreme Court of the United States in *Georgia* v. *Rachel*, —— U.S. ——, 16 L. Ed. 2d 925 (1966), *City of Greenwood* v. *Peacock*, —— U.S. ——, 16 L. Ed. 2d 944 (1966), and *Strauder* v. *West Virginia*, 100 U.S. 303 (1879).

2. Defendant-petitioner Robert Johnson is a Negro. He is a resident and citizen of the City and County of Grenada, State of Mississippi; and is now and has been active, at all times pertinent herein, in the civil rights movement in the City and County of Grenada since its inception in June of 1966. The Negroes of Grenada have long been the victims of discrimination, segregation and oppression on account of their race. As a means of overcoming such discrimination, segregation and oppression, and as a part of his activities in the civil rights movement, Robert Johnson has urged the Negroes of Grenada to register to vote, to exercise their right to vote and to exercise their right to the full and equal enjoyment of places of public accommodation. Robert Johnson is now, and at all times pertinent herein has been, a staff member of the Southern Christian Leadership Conference, Inc., and the "project leader" of the Southern Christian Leadership Conference's activities in support of the civil rights movement in Grenada.

3. Robert Johnson's activities in the civil rights movement in Grenada are well-known to the Grenada County

prosecutor, Jim Criss; to the Grenada County Sheriff, Suggs Ingram, and his deputy sheriffs; to a constable of Grenada County, Grady Carroll; to a large segment of the white population of Grenada County and City including, upon information and belief, a substantial number of those comprising the venire at the January 1967 Term of the Grenada County Circuit Court; and, upon information and belief, to the Grenada County Circuit Court judge, the Honorable Marshall Perry, and to the District Attorney of Grenada County, Chatwin Jackson.

4. January 23, 1967, was the opening day of the January 1967 Term of the Grenada County Circuit Court. At the opening of the Court the members of the jury venire were present and seated in one of the two sections of the courtroom intended for the general public. Those two sections each consists of several rows of wooden benches similar to church pews. The two sections are divided by a middle aisle and there is, in addition, an aisle on each side of the public part of the courtroom. The public, including defendants in pending cases not yet being heard, are permitted to enter the courtroom only through one set of double doors. The aforesaid veniremen, virtually all of whom were white, were seated in that section of the courtroom nearest to the doors through which the public had to enter and filled up the front and several more rows of that section. Therefore, of necessity anyone entering the public portion of the courtroom would have to cross in front of the section of veniremen in order to reach the far section of the public seats.

5. When court convened at 9:00 A.M. on January 23, Judge Perry, upon information and belief, announced that there would be in effect a rule of his court which prohibited anyone entering the public portion from walking in front of the veniremen whom, as noted, were seated immediately next to the public doors. Defendant-petitioner Robert Johnson was to be present in said Circuit Court that morning inasmuch as he was a defendant in certain criminal cases on the docket at that term of said court. Many other members of the civil rights movement in Grenada were also defendants in cases on

that docket and were seated in the section on the far side of the courtroom, i.e., away from the public doors. At approximately 9:05 A.M. Robert Johnson entered the courtroom and started to walk across to the far section to sit with said other defendants, passing as he did so directly in front of the veniremen seated in the near section. At that point Robert Johnson was abruptly apprehended by one or more officers of the court acting on behalf of the court and the County of Grenada. Said officers ordered Robert Johnson to go down the side aisle behind the section of veniremen. When Robert Johnson sought an explanation of this irrational and bewildering order which treated him like the "nigger" which Grenada Negroes had long been subjected to, he was physically removed from the courtroom, arrested for contempt of court upon the direction of Judge Perry and ordered to be taken to jail, again upon the instruction of Judge Perry. The removal from the courtroom, arrest and jailing were performed by the aforesaid Constable Grady Carroll, Sheriff Suggs Ingram and his deputies, acting on behalf of the Circuit Court and County of Grenada.

6. As a result of the foregoing events, during the week of January 23, 1967, a citation for criminal contempt has been issued against defendant-petitioner by the Circuit Court of Grenada County, and trial on that charge is to be had in the Circuit Court of Grenada County on February 1, 1967. No copy of said citation has been served upon defendant-petitioner but attached hereto is a copy of the summons for Robert Johnson to appear in connection with said charge, this summons being the only document served upon defendant-petitoiner in connection with said charge.

7. The aforesaid rule of court promulgated by Judge Perry, was upon information and belief, enforced only against Negroes and not against white persons. Each Negro, including Robert Johnson, who attempted to walk in front of the section of jury veniremen, while entering or leaving the courtroom was prevented from doing so by officers of the court and county while each white person was allowed to pass in front of the veniremen without interference.

8. Under Title II, § 202, of the Civil Rights Act of 1964, defendant-petitioner was given the right to be free, at any establishment or place, from discrimination or segregation of any kind on, the ground of race or color where such discrimination or segregation is required by, among other things, any regulation, rule or order of the State or any agency thereof. Section 203 of said Title and Act forbids all persons from intimidating, threatening or coercing, or attempting to intimidate, threaten or coerce anyone with the purpose of interfering with any right or privilege secured by § 202. The systematic and discriminatory enforcement by Judge Perry and the officers of his court of the rule for whose violation Robert Johnson was arrested constitutes a denial of defendant-petitioner's rights under § 202. Robert Johnson's subsequent arrest and pending prosecution are acts or attempted acts of intimidation, threat and coercion in violation of § 203. Such discriminatory enforcement and defendant-petitioner's ensuing arrest and pending prosecution constitute a denial of the equal civil rights of Robert Johnson in the state courts of Mississippi within the meaning of 28 U.S.C. § 1443(1) and permits removal of said prosecution under § 1443(1), as construed by the United States Supreme Court in *Georgia* v. *Rachel* and *City of Greenwood* v. *Peacock*, *supra*.

9. Under Title III, § 301, of the Civil Rights Act of 1964, defendant-petitioner was given the right to the equal utilization of any public facility which is owned or operated or managed by or on behalf of any state or subdivision thereof without regard to race or color. Defendant-petitioner was also given the right under that section to be free of any threat or deprivation of the aforesaid right to equal utilization. The systematic and discriminatory enforcement by Judge Perry and the officers of his court of the rule for whose violation Robert Johnson was arrested constitutes a denial of defendant-petitioner's rights under § 301. Robert Johnson's subsequent arrest and pending prosecution are threats of deprivation in violation of § 301. Such discriminatory enforcement and defendant-petitioner's ensuing arrest and

pending prosecution constitute a denial of the equal civil rights of Robert Johnson in the state courts of Mississippi within the meaning of 28 U.S.C. § 1443(1) and permits removal of said prosecution under § 1443(1), as construed by the United States Supreme Court in *Georgia* v. *Rachel* and *City of Greenwood* v. *Peacock, supra.*

10. Under 42 U.S.C. § 1981, defendant-petitioner was given the right to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall not be subject to any punishment, penalty or the like to which white citizens are not subjected. The systematic and discriminatory enforcement by Judge Perry and the officers of his court of the rule for whose violation Robert Johnson was arrested constitutes a denial of defendant-petitioner's rights under § 1981. See *Hamilton* v. *Alabama*, 376 U.S. 650 (1964), *reversing per curiam* 156 So. 2d (1963); *Johnson* v. *Virginia*, 373 U.S. 61 (1963). Robert Johnson's subsequent arrest and pending prosecution are acts constituting punishment and penalty in violation of § 1981. Such discriminatory enforcement and defendant-petitioner's ensuing arrest and pending prosecution constitute a denial of the equal civil rights of Robert Johnson in the state courts of Mississippi within the meaning of 28 U.S.C. § 1443(1) and permits removal of said prosecution under § 1443(1), as construed by the United States Supreme Court in *Georgia* v. *Rachel* and *City of Greenwood* v. *Peacock, supra.*

11. Defendant-petitioner's arrest and prosecution have been carried out, upon information and belief, with the purpose and effect of: (1) interfering with Robert Johnson's attempt to peacefully urge other Negroe citizens of Grenada to register to vote, and to vote, which purpose is prohibited by § 11(b) of the Voting Rights Act of 1965; and (2) punishing Robert Johnson for exercising his rights and attempting to urge others to exercise their rights under § 201 of the Civil Rights Act of 1964, which purpose is prohibited by § 203 of the Civil Rights Act of 1964. Said purpose and their implementation by defendant-petitioner's arrest and pending prose-

cution constitute a denial of the equal civil rights of Robert Johnson in the state courts of Mississippi within the meaning of 28 U.S.C. § 1443(1) and permits removal of said prosecution under § 1443(1) as construed by the United States Supreme Court in *Georgia* v. *Rachel* and *City of Greenwood* v. *Peacock, supra.*

12. Under 42 U.S.C. § 1981, as aforesaid, and under the uniform body of federal case law construing the Fourteenth Amendment to the United States Constitution, defendant-petitioner is given the right to a fair trial and to have his pending prosecution tried before a jury selected without discrimination on the grounds of race or sex. See *Strauder* v. *West Virginia*, 100 U.S. 303 (1879). Such rights are denied Robert Johnson or cannot be enforced by him in the Circuit Court of Grenada County because:

(a) Defendant-petitioner is to be tried in the same court whose arbitrary and discriminatorily-applied rule he "violated" and before the same judge who promulgated said rule and who ordered defendant-petitioner's arrest and that a contempt citation be sworn out against him. This is a violation of due process under *In the Matter of Murchison*, 349 U.S. 133 (1955).

(b) By, upon information and belief, his charges to the grand jury at the opening of the July 1966 and January 1967 Terms of the Grenada County Circuit Court, by his baseless ordering the arrest of defendant-petitioner's attorney at the January 1967 Term, by his treatment of defendant-petitioner at said Term and upon information and belief, by various other acts and statements, Judge Perry has demonstrated his bias against and pre-judgment of defendant-petitioner, his attorney, the civil rights organizations to which defendant-petitioner belongs and the civil rights law group with which his attorney is affiliated.

(c) Upon a hearing in the Grenada County Circuit Court on January 30, 1967, on a motion to quash

the jury venire in a pending criminal case, the self-same venire that would serve at Robert Johnson's trial, it was conclusively demonstrated that there has been systematic exclusion of Negroes from said jury venire.

(d) Section 1762 of the Mississippi Code, expressly prohibits the service of women upon the juries of Mississippi. In fact upon information and belief, no women were called to serve upon the venire that would serve at defendant-petitioner's pending trial.

13. With respect to the equal civil rights of defendant-petitioner, as set forth in paragraphs 8-11 *supra*, such rights cannot be enforced in the Circuit Court of Grenada County for the reasons alleged in subparagraphs (a)-(d) of paragraph 12 herein.

14. Inasmuch as the proceeding sought to be removed is criminal, no bond or filing fee is required.

WHEREFORE, defendant-petitioner prays that the aforesaid criminal prosecution be removed to this Court from the Circuit Court of Grenada County, Mississippi, for trial pursuant to 28 U.S.C. §§ 1443 (1) and 1446.

February 1, 1967.

Respectfully submitted,

DENISON RAY
DENISON RAY
B. E. BERGESEN, III
233 North Farish Street
Jackson, Mississippi
Attorneys for
Defendant-Petitioner

[Filed Feb. 1, 1967, Mrs. Aline B. Worsham, Circuit Clerk, By Florence C. Rogers, D.C.]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

No.

STATE OF MISSISSIPPI, PLAINTIFF-RESPONDENT

—*v*—

ROBERT JOHNSON, DEFENDANT-PETITIONER

VERIFICATION

STATE OF MISSISSIPPI)
) SS.:
COUNTY OF GRENADA)

ROBERT JOHNSON, being duly sworn, deposes and says:

1. I am a Negro citizen and resident of the United States and of the City and County of Grenada, Mississippi. I am the defendant-petitioner herein and make this affidavit and verification in support of my petition for removal and pursuant to 28 U.S.C. § 1446(a) and the Rules of this Court.

2. I have read the annexed petition for removal and know the contents thereof. I know of my own personal knowledge that all facts stated in said petition for removal are true except such as are stated on information and belief and as to those facts, I believe them to be true.

ROBERT JOHNSON
ROBERT JOHNSON

Sworn to before me this
1st day of February, 1967.
TURNER M. BRANFORD
Notary Public
My commission Expires December 6, 1970.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

No. CRW 6729-S

STATE OF MISSISSIPPI, PLAINTIFF

v.

ROBERT JOHNSON, DEFENDANT

ORDER

In his petition for removal, the plaintiff maintains that he has been unjustly discriminated against by the Judge of the state trial court when he was held in contempt of that court. He alleges that this action is in direct conflict with Title II, § 202 of the Civil Rights Act of 1964, and, therefore, this case is removable under 28 U.S.C. § 1443. However, it is the opinion of this Court that this action is controlled by *Greenwood* v. *Peacock*, 384 U.S. 808, 86 S.Ct. 1800, 16 L. Ed. 2d 944 (1966). In *Peacock*, the Court pointed out that if what the petitioner says is true, then there has in fact been

> an outrageous denial of (his) federal rights, and the federal courts are far from powerless to redress the wrongs done to (him). The most obvious remedy is the traditional one emphasized . . .—vindication of (his) federal claims on direct review by this court, if those claims have not been vindicated by the trial or reviewing courts of the State. . . .
>
> But there are many other remedies available in the federal courts to redress the wrongs claimed. . . . If . . . there is a complete absence of evidence against (the petitioner), (his) conviction will be set aside because of a denial of due process of law. . . . If at (his) trial (he is) in fact denied any federal constitutional rights, and these denials go uncorrected by other courts of the State, the remedy of federal habeas corpus is freely available to (him). . . . If (his) federal claims at trial have been de-

nied through an unfair or deficient fact-finding process, that, too, can be corrected by a federal court. . . . 384 U.S. at 828-830, 16 L. Ed. 2d at 957-58.

This lengthy passage is cited in order that it might be clear that while removal has been denied in this case, the petitioner has adequate means available to prevent encroachment of his federally guaranteed rights. Therefore, in accordance with the Opinion signed today, it is

ORDERED:

1) That the above-styled case is ordered remanded to the Circuit Court of Grenada County, Mississippi.

2) That the petitioner is ordered to surrender to the Sheriff of Grenada County, Mississippi on or before the 1st day of December, 1968.

3) That this Court retains jurisdiction of this cause insofar as it is necessary to require compliance with the requirements of this Order.

This the 14 day of November, 1968.

/s/ Orma R. Smith
ORMA R. SMITH
District Judge

I hereby certify that the foregoing is a true copy of the original thereof now in my office.

Attest 6-20-69
WILLIAM T. [Illegible]
Clerk
By /s/ Katherine [Illegible]

I have this day executed the within writ personally by delivering to the within named defendant Robert Johnson a true copy of this writ.

This the 29 day of Nov. A. D. 1968

JESSE STRIDER
Sheriff
By FLOYD WOLFE
D. S.

(Circuit Court of Grenada County, Mississippi)

APPEARANCE BOND

STATE OF MISSISSIPPI)
COUNTY OF GRENADA)

We, Robert Johnson, Principal and Lawrence E. Smith and Ruby Savage, Sureties agree and bind ourselves to pay unto the State of Mississippi One thousand & No/100 - - - - Dollars ($1000.00) unless the said Robert Johnson shall appear before the Circuit Court of Grenada County, at the next term thereof held at the Courthouse of said County in the City of Grenada on the 27th day of January, 1969, to answer a charge of Contempt of Court and then and there remain from day to day and term to term, until discharged by law, said charge being by Commitment to await the Action of the Grand Jury.

Witness our signature this the 29th day of November, A. D., 1968.

/s/ Robert Johnson Principal
/s/ Lawrence E. Smith Surety
/s/ Ruby Savage Surety

SURETIES OATH

STATE OF MISSISSIPPI)
COUNTY OF GRENADA)

Personally appeared before me, Robert Johnson of said County and Lawrence E. Smith and Ruby Savage sureties on the within bonds, who each being duly sworn, state on oath, that they are worth, in property in Grenada County, subject to execution at law, over and above all indebtedness and exemptions the amount of this bond.

/s/ Lawrence E. Smith Surety
/s/ Ruby Savage Surety

Sworn to and subscribed before me, this the 29th day of November, 1968.

[SEAL]

/s/ Orley Lilly
My commission Expires First Monday in January, 1972

APPROVED, this 29th day of November, 1968.

JESSE A. STRIDER Sheriff
By ---------- Deputy

[Filed Nov. 29, 1968, Orley Lilly, Circuit Clerk]

November 28, 1968

This is to certify that each of the undersigned persons below is willing to pay one 7th of the amount of the property bond that Rev. L. E. Smith is making for Robert Johnson if anything occurs to cause the responsibility to be his.

Signed Rev. B. J. Cameron
Mrs. Essie L. Mullen—Miss Mable Willmington
Mrs. Paulette B. Williams
Mrs. S. M. Springfield Versie L. James
Mrs. B. M. Askew
Mrs. Catherine Johnson, Mother

IN THE CIRCUIT COURT
OF GRENADA COUNTY, MISSISSIPPI

SUMMONS

STATE OF MISSISSIPPI
The Sheriff of Grenada County—Greetings:

You are hereby commanded to summon ROBERT JOHNSON instant, if to be found in your county, to be, and personally appear before the Circuit Court of Grenada County at a term of court to be held at the county courthouse of said county in the City of Grenada, Mississippi, 9:00 A.M., February 1st 1967, then and there to show cause, if any he can, why he should not be punished for contempt of said court in cause number 3581 now on file in said Court, and have you then and there present with your proceedings endorsed hereon.

Issued under my hand and the seal of said court in my office at Grenada, Mississippi, on this the 24 day of Jan. 1969.

/s/ Mrs. Aline B. Worsham
Clerk, Circuit Court

By .....
D. C.

IN THE CIRCUIT COURT
OF GRENADA COUNTY, MISSISSIPPI

REGULAR JANUARY TERM 1969

No. 3581

STATE OF MISSISSIPPI, PLAINTIFF

vs

ROBERT JOHNSON, DEFENDANT

Appearances:

Honorable Martha M. Wood, Jackson, Miss. appearing for the defendant.
Honorable G. Jyles Eaves, District Attorney, Louisville, Miss. and
Honorable John T. Keeton, County Prosecuting Attorney, Grenada, Miss. appearing for the State.

Be It Remembered, that this cause came on to be heard on the 27th day of January, A.D. 1969, being a day of the regular January 1969 term of the Circuit Court of Grenada County, Miss. and there being present as officers of said Court the Honorable Marshall Perry, Circuit Judge of the Fifth Circuit Court District of Miss. presiding, Jesse Strider, Sheriff of said County, Orley Lilly, Circuit Clerk of said County, and W. W. DeLoach, official Court Reporter of said district.

The following proceedings were had, to-wit:

IN THE CIRCUIT COURT OF GRENADA COUNTY, MISSISSIPPI

Regular January, 1969 Term

No. 3581

STATE OF MISSISSIPPI

vs

ROBERT JOHNSON, DEFENDANT

ORDER ADJUDGING ROBERT JOHNSON IN CONTEMPT AND PROVIDING PUNISHMENT, ETC.

The within matter this day came on for consideration, and the Court hereby finds and adjudicates as follows:

That on the morning of January 23, 1967, on the opening day of the regular January, 1967 term of this Court, at approximately ten minutes after nine o'clock the within Robert Johnson (he being at that time a defendant in a criminal case pending in said Court), entered the court room at a time when Court was in session and jurors were being called. The Judge had previously that morning in open court made the announcement that all persons entering the court room that morning were to walk along the aisle near the side wall leading from the door, going toward the back of the room and then find seats anywhere in the room outside the space reserved for jurors and county officers, and the court especially emphasized that no person was to walk between this reserved section and the Judge while jurors were being called. The purpose of this rule was to help expedite the work of the court and make for more orderly proceding. All Bailiffs and Deputies on duty were instructed to enforce this rule and to instruct all persons entering the room after the announcement was made in open court.

When the said Robert Johnson (hereinafter called defendant) entered the court room, as above stated and after said rule had been announced, the Deputy Sheriff stationed near said door (Mr. Aaron Lott) instructed the defendant as to said rule and told him to go down said aisle toward the back; whereupon said defendant, in a loud and defiant tone of voice which was heard by

many people throughout the court room and was heard by the Judge, said: "What the Hell do you mean go around." Said Johnson, defendant, then continued to stand and look around over the room, disrupting the court proceedings. The Sheriff and another Deputy, on order of the Court, arrested said Johnson and brought him before the Bench. The Court advised said defendant that he was in contempt and would be sentenced later during the court term.

About two or three days later, during that same week and before the Court had imposed sentence and judgment in this matter, a petition was filed on behalf of said defendant by his attorney in the United States District Court at Oxford, Mississippi, the effect of which was to remove said case out of the hands and control of the within State Court, temporarily and pending action thereon by said federal court. By order of the said U. S. District Court, dated November 14, 1968 the said case was returned to the Circuit Court of Grenada County, Mississippi. Upon being informed by the Clerk of said action by the Federal Court, this Court proceeded in vacation to order within defendant to post a bail bond to guarantee his appearance at the first day of the next regular term of court, which date was January 27, 1969. The said defendant posted said bail bond without being placed in custody.

That this Court now has jurisdiction of both the defendant and the subject matter, and the authority to enter this sentence and judgment, this court having inherent power to punish for criminal contempt.

Wherefore, it is hereby ordered and adjudged that said Robert Johnson, within defendant is hereby adjudged in criminal contempt, and for said direct contempt done and committed in open Court and in the presence of the Judge and Court, is hereby sentenced to serve a term of four months in the Grenada County jail and pay all court cost in this matter.

So ordered and adjudged in open Court on this the 27th day of January, 1969.

MARSHALL PERRY
Circuit Judge

IN THE SUPREME COURT OF MISSISSIPPI

Misc. No. 81

[Received & Filed Jan. 28, 1969, Julia H. Kendrick, Clerk, Yvonne Burnhem, D.C.]

ROBERT JOHNSON

v.

STATE OF MISSISSIPPI

ORDER

Upon notice and hearing of counsel for petitioner and the State of Mississippi, it is hereby

ORDERED that the appearance or bail bond of petitioner Robert Johnson be reduced pending appeal from $2,000 to $300.00, pursuant to the provisions of Mississippi Code 1942 Annotated section 1152 (1956).

This the 28th day of January, 1969.

W. N. ETHRIDGE, JR.
Chief Justice
Supreme Court of Mississippi

[Filed Mar. 13, 1969, Orley Lilly, Circuit Clerk, By Florence Rogers, D.C.]

IN THE CIRCUIT COURT
OF GRENADA COUNTY, MISSISSIPPI

Criminal Action No. 3581

STATE OF MISSISSIPPI, PETITIONER

—*vs*—

ROBERT JOHNSON, RESPONDENT

NOTICE OF APPEAL TO THE CIRCUIT CLERK

TO: Clerk of the Circuit Court
Grenada County, Mississippi

PLEASE TAKE NOTICE that defendant desires to appeal his conviction and sentence in this cause rendered against him on January 27, 1969, to the Supreme Court of Mississippi, and therefore he respectfully requests and directs that, upon the posting of the necessary bond, you prepare and forward to the Supreme Court of Mississippi, the following:

The entire record in this cause including any and all transcribed notes, documents, orders and any and all contents of the record in this cause in its entirety.

Dated: February 6, 1969

MARTHA M. WOOD
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississippi 39201
Attorney for Respondent

[Filed Feb. 6, 1969, Orley Lilly, Circuit Clerk.]

IN THE CIRCUIT COURT
OF GRENADA COUNTY, MISSISSIPPI

No. 3581

STATE OF MISSISSIPPI, PETITIONER

—*vs*—

ROBERT JOHNSON, RESPONDENT

NOTICE OF APPEAL TO THE OFFICIAL COURT REPORTER

OFFICIAL COURT REPORTER:

PLEASE TAKE NOTICE that the respondent, Robert Johnson, desires to appeal his conviction and sentence in this cause rendered against him on the 27th day of January, 1969, to the Supreme Court of Mississippi, and therefore respectfully prays and directs that, upon the posting of the necessary bond, you transcribe your notes, including your notes of any evidence at any hearings herein, and file the same with the Clerk of the Circuit Court of Grenada County, Mississippi.

February 6, 1969

MARTHA M. WOOD
MARTHA M. WOOD
233 North Farish Street
Jackson, Mississippi 39201
Attorney for Respondent

[Filed in my office this 6 day of February, 1969,
Orley Lilly, Clerk]

(Circuit Court of Grenada County, Mississippi)

APPEAL BOND

THE STATE OF MISSISSIPPI,)
Grenada County.)

Personally appeared before me, Orley Lilly Circuit Clerk in and for said County and State Lawrence E. Smith and Catherine Johnson Sureties to the foregoing bond, who being by me duly sworn, depose and say that they own, over and above all their legal liabilities, visible property subject to execution and not exempt by law from sale for debt:

The said Property of the value of Three hundred & no/100 Dollars,

The said Property of the value of Three hundred & no/100 Dollars,

The said Property of the value of Three hundred & no/100 Dollars,

/s/ Lawrence E. Smith
/s/ Catherine Johnson
/s/ Finley Johnson

Sworn to and subscribed before me, this 29th day of January 1969.

_____
Clerk

The foregoing Bond with the sureties thereto, examined and approved, this 29th day of January 1969.

/s/ Orley Lilly
Clerk
D. C.

No. ———

APPEAL BOND

Circuit Court of
Grenada County.

IN CASE OF
STATE OF MISSISSIPPI

vs.

ROBERT JOHNSON

Filed the ..... day of

..... 19...

..... Clerk

..... D. C.

APPEAL BOND TO SUPREME COURT

THE STATE OF MISSISSIPPI,)
Grenada County.)

KNOW ALL MEN BY THESE PRESENTS:

That we, Robert Johnson Principal, and Catherine Johnson & Lawrence E. Smith & Finley Johnson Sureties, are held and firmly bound unto The State of Mississippi in the penal sum of Three Hundred & No/100——— DOLLARS, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents, the 29th. day of January A. D. 1969.

That condition of the above obligation is such, That, whereas, in a case lately pending in the Circuit Court of Grenada County, wherein The State of Mississippi was plaintiff, and Robert Johnson Defendant, a judgment was rendered on the 27th day of January 1969, a day of the January Term, 1969, of said Circuit Court of said County, in favor of said Robert Johnson was cited for Criminal Contempt committed in the presence of the Court and was sentenced to serve four months in the County Jail against said ..... and the said Robert Johnson conceiving ..... aggrieved thereby hath prayed for and obtained an appeal to revise and reverse said sentence returnable to the next Term of our Supreme Court.

Now, therefore, if the said obligators shall pay and satisfy the judgment of the Supreme Court and all costs of said appeal, and of the Court below, in case the judgment be affirmed, then this obligation to be void, otherwise to remain in full force and effect.

/s/ Robert Johnson (SEAL)
/s/ Lawrenee E. Smith (SEAL)
/s/ Catherine Johnson (SEAL)
/s/ Finley Johnson (SEAL)

[Filed Jan. 30, 1969, Orley Lilly, Circuit Clerk]

IN THE CIRCUIT COURT
OF GRENADA COUNTY, MISSISSIPPI

No. 3581

STATE OF MISSISSIPPI

—*vs.*—

ROBERT JOHNSON

APPEARANCE BOND

STATE OF MISSISSIPPI)
COUNTY OF GRENADA)

IN THE CIRCUIT COURT OF GRENADA COUNTY
TERM 1969

KNOW ALL MEN BY THESE PRESENTS, that we Robert Johnson Principal, and Catherine Johnson and Lawrence Smith Sureties, (1) residents of the State, (2) are held and firmly bound unto the State of Mississippi in the penal sum of $300, for which payment well and truly to be made, we jointly and severally, bind ourselves, our heirs, our executors, and administrators forever.

The condition of the foregoing obligation is such, that whereas, in the CIRCUIT Court of GRENADA County at the Term, on the 27th day of January defendant was convicted of criminal contempt and sentenced to imprisonment for four months, and the said Robert Johnson, feeling aggrieved by said conviction and judgment has prayed and obtained an appeal to the Supreme Court of Mississippi.

Now, if the said Robert Johnson shall appear in said Grenada County of Mississippi, and abide by and perform such sentence or judgment as may be rendered in the case, then this obligation be void; otherwise to remain in full force and effect.

GIVEN under our hands this 8th day of September, 1969.

/s/ Robert Johnson
Principal

/s/ Catherine Johnson
Surety

/s/ Lawrence E. Smith
Surety

Surety

Surety

The foregoing bond approved this 8th day of Sept., 1969.

/s/ Jesse A. Strider
Sheriff, Grenada Co.

STATE OF MISS.
COUNTY OF GRENADA:

I, the undersigned, hereby certify that I witnessed the signature of Robert Johnson on this the 8th day of Sept., 1969.

/s/ Turner M. Branford
Notary Public
My Commission Expires December 6, 1970

[SEAL]

[Filed Sep. 8, 1969, Orley Lilly, Circuit Clerk, By Florence Rogers]

IN THE CIRCUIT COURT
OF GRENADA COUNTY

Cause No. 8531

[Received & Filed Dec. 23, 1969, Julia H. Kendrick, Clerk, Yvonne Burnhem, D.C.]

IN RE: ROBERT JOHNSON

Contempt Proceeding

BILL OF EXCEPTIONS

COMES Robert Johnson, by his attorney Martha M. Wood, in the above styled and entitled cause, and takes a Special Bill of Exceptions pursuant to Sections 1152 and 1534 of the Mississippi Code of 1942, Recompiled, to the rulings of the Court, which rulings were made in the presence of Robert Johnson (insofar as hereinafter stated to be made in his presence), and at all times in the presence of Martha M. Wood and in open court. As and for the Special Bill of Exceptions:

I. *Necessary Background*

1. Robert Johnson (hereinafter "Respondent") was cited for criminal contempt of court while sitting, which was alleged to have been committed on January 23, 1967, at which time Respondent was present in the Circuit Court of Grenada County as a defendant in a pending criminal proceeding which has since been dismissed.

2. A summons ordering Respondent to show cause why he should not be punished for contempt of court was issued, together with a Petition signed by the County and District Attorneys reciting the alleged facts of such offense, both dated January 24, 1967, and both being part of the Circuit Court file herein.

3. A fiat signed by Circuit Court Judge Marshall Perry dated January 24, 1967, ordering Respondent to appear before the Circuit Court of Grenada County on February 1, 1967, to show cause why he should not be

punished for contempt of court is contained in the Circuit Court file herein.

4. A Petition for Removal of said cause to the United States District Court for the Northern District of Mississippi, Western Division, was filed on February 1, 1967. On November 19, 1968, said cause was remanded by the District Court to the Circuit Court of Grenada County. Said Petition and Order are part of the Circuit Court file herein.

5. On January 22, 1969, Respondent filed a suit entitled *Johnson et al.* v. *Gibbs et al.*, in the United States District Court for the Northern District of Mississippi, Western Division, No. WC 69-6 S, for preliminary and permanent injunctions prohibiting the trial of Negroes or women in the Circuit Court of Grenada County until such time as Negroes and women were not systematically excluded from the jury lists and venires of Grenada County in violation of the constitutional rights of Respondent, other plaintiffs and members of their class. A hearing was held before the Honorable Judge Orma R. Smith on January 24, 1969, and an order was entered granting a preliminary injunction pursuant to plaintiffs' request in that case on January 25, 1969. Judge Marshall Perry was a defendant in said case. A copy of said order is attached hereto as Exhibit A.

6. A summons was issued to Respondent, dated January 24, 1969, to appear in the Circuit Court of Grenada County on January 27, 1969, to show cause why he should not be punished for contempt of court allegedly committed on January 23, 1967.

II. *First Appearance Before Court*

7. At 9:00 A.M. on January 27, 1969, Respondent and his attorney, Martha M. Wood, a member in good standing of the Mississippi Bar, appeared before Judge Marshall Perry in the Circuit Court of Grenada County.

8. The first matter called by Judge Perry was the matter of Robert Johnson. Robert Johnson and Martha M. Wood approached the bench and the following transpired (there was no Court Reporter transcribing the proceedings):

(a) Judge Perry had in his hands a two page Order, a copy of which is attached hereto as Exhibit B, finding Respondent guilty of contempt of court, sentencing him to four months in the Grenada County jail and costs, and setting an appearance bond in the amount of $2000.

(b) Martha M. Wood at that time requested a hearing which request was denied.

(c) Martha M. Wood then objected to denial of a hearing on the contempt charge, and further objected that the sentence and bond exceeded the statutory limits for contempt.

(d) Judge Perry stated that he had intended to give Respondent a hearing on the contempt charge (as the court files ordering him to appear and show cause prove), but that since Respondent had the audacity to go to federal court (and whether Judge Perry meant by that the original removal order or the affirmative jury suit or both is not clear), he was not going to give him any hearing.

(e) Judge Perry further stated that the Mississippi statutes relating to contempt of court did not apply, and that he could set sentence and bond in any amount within his discretion.

III. *Second Appearance Before Court*

9. Later that morning, and at approximately 11:00 A.M., Judge Perry permitted Martha M. Wood to address the Court. Respondent was in jail and was not present.

10. Martha M. Wood stated in open court that section 1152 of the Mississippi Code of 1942, Recompiled, provided a maximum appearance bond in the case of contempt of the court while sitting of $300, and requested the court to reduce the bond from $2000 to within the statutory maximum. Judge Perry refused, denying the applicability of the statute.

11. Martha M. Wood stated in open court that section 1656 of the Mississippi Code of 1942, Recompiled, provided a maximum punishment for contempt of the

court while sitting of 30 days in the county jail and a fine of $100, and requested the court to reduce the sentence of Respondent to within the statutory maximum. Judge Perry refused, again denying the applicability of the statute.

12. Martha M. Wood further stated in open court that if Respondent were given the hearing to which he was entitled, that she expected to and would have done the following (each of the following points was made in open court, though not in the detail hereinafter set forth):

(a) Martha M. Wood would have made a motion to associate Lawrence Aschenbrenner, an expert in the field of criminal law, and an attorney in good standing of the Bars of the State of Oregon, the United States Supreme Court, the Fifth Circuit Court of Appeals and the United States District Courts for the Districts of Oregon and the Northern District of Mississippi. In support of said motion she would have introduced certificates of good standing; oral testimony by Mr. Aschenbrenner as to his qualifications and experience in the field of criminal law; and, oral testimony by Respondent that Mr. Aschenbrenner was counsel of his choice and that he wished for Mr. Aschenbrenner to be associated with Martha M. Wood in his defense.

(b) Martha M. Wood would have made a motion for a continuance of the hearing for contempt to a later day in the Term of Court. The January 1969 Term of Court was the first Term of Court since the within case was remanded to the Circuit Court. January 27, 1969, was the first day of the Term of Court and other than it being the first day and Respondent and his attorneys being aware that they had to appear on that day, no day certain was fixed for a hearing. Respondent needed such a day certain in order to subpoena a large number of witnesses, including several out of state witnesses whom he desired to subpoena under the Uniform Material Witnesses Act.

(c) Martha M. Wood would have made a motion to recuse Judge Marshall Perry, or in the alternative for a change of venue on the grounds:

(1) that contempt of court should not be tried before a judge who would be acting as judge, juror and prosecuting witness;

(2) That Judge Perry is unable to sit fairly and impartially in the case of Respondent in that he is biased and prejudiced against Negroes and civil rights workers, and he knows that Respondent is a Negro and a civil rights worker;

(3) That Judge Perry is unable to sit fairly and impartially in the case of Respondent in that he is biased and prejudiced against civil rights lawyers, and he knows that Respondent's attorneys are civil rights lawyers; and

(4) That Respondent would have the right to and would call Judge Marshall Perry as an essential witness in his hearing for contempt.

All of the above grounds (1) through (4) would have been supported by documentary evidence and the testimony of numerous witnesses.

(d) Martha M. Wood would have demurred to the Petition citing Respondent for contempt of court in that it failed to state facts sufficient to constitute a contempt of court under Mississippi law.

(e) Martha M. Wood would have made a motion for a jury trial on the grounds that Respondent was entitled to a jury trial under Article 3, Section 26 of the Mississippi Constitution and the Sixth and Fourteenth Amendments to the United States Constitution.

(f) Martha M. Wood would have proven on the merits of the contempt charge that Respondent was not guilty of direct or constructive contempt of court under state or federal law. Proof on the merits would have come from a large number of witnesses who were spectators in the courtroom on the day the alleged contempt occurred and also from testimony by Judge Marshall Perry.

(g) Martha M. Wood would have proven, if Respondent were found guilty of contempt, facts in mitigation of sentence.

13. Judge Perry stated that Respondent was not entitled to a hearing and that he did not want to hear

about what Respondent would have proved if given the opportunity.

14. Martha M. Wood called to the attention of the court section 1152 of the Mississippi Code of 1942, Recompiled, which provides that the Judge shall sign a bill of exceptions within one day, if demanded, and requested the court for an extension of time within which to file such a Bill of Exceptions. Judge Perry stated that section 1152 of the Mississippi Code of 1942, Recompiled did not apply in the instant case, that Respondent was not otherwise entitled to a Bill of Exceptions, and that he would in no case sign a Bill of Exceptions for Respondent.

15. Attorneys Jon Thames and Robert Kelly, both of whom are members in good standing of the Mississippi Bar, were in the Circuit Court of Grenada County on court business on January 27, 1969, and were at all times relevant hereto present in the courtroom, and can swear to the substance of the exceptions taken in Parts II and III hereof. Neither attorney is related to the Respondent or his attorneys herein or is in any manner interested in this case.

IV. *Conclusion*

The exceptions stated in Parts II and III hereof were tendered in open court and in the presence of Judge Marshall Perry, attorneys Martha M. Wood, Jon Thames and Robert Kelly, and in the presence of Respondent Robert Johnson as to the exceptions stated in Part II only. Judge Marshall Perry refused in open court to sign any Bill of Exceptions, and denied the applicability of statutes so requiring. Therefore this Bill was not tendered to Judge Perry for signature. This Bill is instead being signed by Respondent's attorney and two attorneys who were present in the court at the time the matters set forth in Parts II and III hereof transpired. Affidavits of each of the attorneys and of Respondent Robert Johnson are attached hereto.

WHEREOF, the above exceptions having been duly tendered, Respondent prays that the contempt conviction

be vacated and Respondent discharged or, in the alternative, that he be given a hearing on said contempt charge.

Respectfully submitted,

/s/ Martha M. Wood
MARTHA M. WOOD
Lawyers' Committee for Civil Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201
Attorney for Respondent

/s/ Jon Thames
JON THAMES
Northern Mississippi Rural Legal Services Program
108½ South Lamar Street
Oxford, Mississippi 38655

/s/ Robert J. Kelly
ROBERT KELLY
Northern Mississippi Rural Legal Services Program
108½ South Lamar Street
Oxford, Mississippi 38655

STATE OF MISSISSIPPI
GRENADA COUNTY

I, Orley Lilly, Circuit Clerk in and for said state and county, do hereby certify that the above and foregoing is true and correct copy of Bill of Exceptions as the same now appears of record in Circuit Clerk's Records of my office.

Given under my hand seal of office, this the 22nd day of December, 1969.

ORLEY LILLY
Cir. Clk.
By /s/ Florence Rogers
D. C.

SUPREME COURT OF MISSISSIPPI

Monday, March 9, 1970 Court Sitting:

45,743

ROBERT JOHNSON

vs.

STATE

This cause having been submitted at a former day of this Term on the record herein from the Circuit Court of Grenada County and this Court having sufficiently examined and considered the same and being of the opinion that there is no error therein doth order and adjudge that the judgment of said Circuit Court rendered in this cause on the 27th day of January 1967— be affirmed as hereinafter modified. That part of the judgment dealing with direct contempt is affirmed, however, the sentence imposed exceeded the maximum prescribed by statute for direct contempt and the judgment is modified and appellant is sentenced to thirty days in jail, and as so modified the cause is affirmed. It is further ordered and adjudged that the State of Mississippi do have and recover of and from the appellant and Lawrence E. Smith, Catherine Johnson and Finley Johnson, sureties on the appeal bond herein, all of the costs of this appeal to be taxed, for which let proper process issue.

Minute Book "BP" Page 79

IN THE SUPREME COURT OF MISSISSIPPI

No. 45,743

ROBERT JOHNSON

v.

STATE OF MISSISSIPPI

INZER, JUSTICE:

Appellant, Robert Johnson, was convicted for direct contempt in the Circuit Court of Grenada County and was sentenced to serve four months in the county jail. From this conviction and sentence he appeals to this Court.

The facts which led to his conviction are set out in the order of the circuit court. The essential part is as follows:

> That on the morning of January 23, 1967, on the opening day of the regular January, 1967, term of this Court, at approximately ten minutes after nine o'clock the within Robert Johnson (he being at that time a defendant in a criminal case pending in said Court), entered the court room at a time when Court was in session and jurors were being called. The Judge had previously that morning in open court made the announcement that all persons entering the court room that morning were to walk along the aisle near the side wall leading from the door, going toward the back of the room and then find seats anywhere in the room outside the space reserved for jurors and county officers, and the court especially emphasized that no person was to walk between this reserved section and the Judge while jurors were being called. The purpose of this rule was to help expedite the work of the court and make for more orderly proceeding. All Bailiffs and Deputies on duty were instructed to enforce this rule and to instruct all persons entering the room after the announcement was made in open court.

When said Robert Johnson (hereinafter called defendant) entered the court room, as above stated and after said rule had been announced, the Deputy Sheriff stationed near said door (Mr. Aaron Lott) instructed the defendant as to said rule and told him to go down said aisle toward the back; whereupon said defendant, in a loud and defiant tone of voice which was heard by many people throughout the court room and was heard by the Judge, said: "What the hell do you mean go around." Said Johnson, defendant, then continued to stand and look around over the room, disrupting the court proceedings. The Sheriff and another Deputy, on order of the Court, arrested said Johnson and brought him before the Bench. The Court advised said defendant that he was in contempt and would be sentenced later during the court term.

About two or three days later, during that same week and before the Court had imposed sentence and judgment in this matter, a petition was filed on behalf of said defendant by his attorney in the United States District Court at Oxford, Mississippi, the effect of which was to remove said case out of the hands and control of the within State Court, temporarily and pending action thereon by said federal court. By order of the said U. S. District Court, dated November 14, 1968, the said case was returned to the Circuit Court of Grenada County, Mississippi. Upon being informed by the Clerk of said action by the Federal Court, this Court proceeded in vacation to order within defendant to post a bail bond to guarantee his appearance at the first day of the next regular term of court, which date was January 27, 1969. The said defendant posted said bail bond without being placed in custody.

That this Court now has jurisdiction of both the defendant and the subject matter, and the authority to enter this sentence and judgment, this Court having inherent power to punish for criminal contempt.

> Wherefore, it is hereby ordered and adjudged that said Robert Johnson, within defendant, is hereby adjudged in criminal contempt, and for said direct contempt done and committed in open court and in the presence of the Judge and Court, is hereby sentenced to serve a term of four months in the Grenada County jail and pay all court cost in this matter.

The record reflects that shortly after appellant had been informed that he was in contempt of court, the court requested the district attorney and the county attorney to file a formal petition citing appellant to appear and show cause why he should not be punished for his contempt. The petition was duly filed and appellant was cited to appear on February 1, 1967, to show cause. Appellant did not file an answer to this petition but did file a motion for the judge to recuse himself. The basis for this motion was that the judge was prejudiced against the appellant because of his civil rights activities and against civil rights attorneys, one of whom represented appellant. After the cause was remanded to the state court, and appellant was again cited to appear he did not file an answer in response to the citation, but did appear in court with his attorney whereupon he was sentenced for his contempt. Appellant then filed a bill of exceptions which was signed by two attorneys who were present in court when appellant was sentenced.

In considering this case there are certain basic principles that must be kept in mind. Appellant was found guilty of direct contempt of court. The circuit court not only had the inherent power to punish for such contempt, but also is authorized by Section 1656, Mississippi Code 1942 Annotated (1956) to fine and imprison any person guilty of contempt of court while the court is sitting. This section limits the punishment to a fine of $100 and imprisonment to continue no longer than thirty days. It is well settled that for a direct contempt the offender may be punished instantly without the necessity of any proof. The judge may act upon what he has seen and

heard. No formal written information of contempt is required, but the judgment of guilt must set out the substantive acts constituting the contempt. Wood v. State, 227 So. 2d 288 (Miss. 1969); Brannon v. State, 202 Miss. 571, 29 So. 2d 916 (1947).

Upon appeal to this Court from a conviction of direct contempt the statement of the substantive facts set out in the judgment of the trial court will be taken as true and correct. Turner v. State, 121 Miss. 68, 83 So. 404 (1920); Gurley v. State, 101 Miss. 190, 57 So. 565 (1912).

Upon review by this Court the question is whether the appellant is guilty of contempt, this determination must be made from the facts set out in the judgment. This Court is not bound by the general rule that we will not reverse unless the trial court is manifestly wrong and we may affirm, reverse, annul or modify the order of conviction as justice may demand. Section 1152, Mississippi Code 1942 Annotated (1956); Bucklew v. State, 209 So. 2d 916 (Miss. 1968).

Appellant assigns several grounds for the reversal of this case but we will only discuss those which we deem merit discussion.

The first and principal contention of appellant is that the procedure by which appellant was convicted violated the Fourteenth Amendment to the Constitution of the United States because appellant was denied any form of a hearing. Appellant cites and relies upon the case of *In re Oliver*, 333 U. S. 257, 683 S. Ct. 499, 92 L. Ed. 682 (1948). This case involved constructive contempt and not direct contempt. The court in *Oliver* pointed out that the exception to the rule requiring notice and a hearing was a situation such as we have in this case before us. The court said:

> The narrow exception to these due process requirements includes only charges of misconduct, in open court, in the presence of the judge, which disturbs the court's business, where all of the essential elements of the misconduct are under the eye of the court, are actually observed by the court, and

where immediate punishment is essential to prevent "demoralization of the court's authority" before the public. (333 U. S. at 275, 68 S. Ct. at 509, 92 L. Ed. at 695).

The trial judge observed appellant's disorderly conduct and immediately ordered appellant to be arrested and brought before him. He informed appellant that he was guilty of contempt and that he would be sentenced later in the term. Apparently, the reason for the delay in imposing the sentence at that time was due to the fact that appellant was a defendant in a case pending for trial at that term of the court. It was not necessary for the court to have the district attorney and the county attorney to file a formal petition asking that appellant be cited for contempt, and the fact that it was filed and appellant was cited did not entitle appellant to a hearing on the question of his guilt. The only answer that the court was required to hear was any answer that appellant might have desired to make in mitigation of the punishment to be imposed. Instead of answering, appellant filed his petition for removal. When the case was remanded to the state court nearly two years later the only way that the court could be assured that the appellant would be before the court was by requiring him to post bail bond for his appearance. This was accomplished with another citation.

Appellant urges that the long delay from the time of the offense until the time punishment was imposed should entitle him to a hearing on the question of whether he was guilty of direct contempt. The delay was caused by removal to the federal court. There was nothing that the trial court could do about imposing punishment until the case was remanded. When it was remanded it was in the same status as it was prior to removal. The most that appellant was entitled to before punishment was imposed was to make any statement he desired in the way of contrition or apology.

A contemnor cannot by a bill of exceptions purge himself of direct contempt of court. The only function of a bill of exceptions in a direct contempt case is to

get before this Court any statement that the contemnor may have made to the trial court relative to an apology or to show contrition for his act, in amelioration of punishment. In this case appellant had this opportunity to file a written answer to the citation wherein he could have set up any matter that he desired by way of apology or contrition. We hold that appellant was not entitled to a hearing on the question of whether his acts and words constituted direct contempt, and in view of the fact that appellant was afforded an opportunity to answer the petition requiring him to show cause, it was not error for the trial court to impose punishment without giving appellant an opportunity to be heard. Ex parte Redmond, 156 Miss. 582, 126 So. 485 (1930).

Appellant assigns as error the failure of the trial judge to grant him a hearing on his claim that the trial judge was biased and prejudiced because of racial prejudice. This raises the question of whether a claim of disqualification of the judge in whose court a direct contempt was committed will be heard. We have not been able to find any decision of this Court on this precise point. An examination of authorities reveals that practically all courts hold that such claim will not lie. One of the cases so holding is *Blodgett* v. *Superior Court*, 290 P. 293, 210 Col. 1 (1930) wherein that Court said:

> This brings us directly to the next question submitted by the petitioner for our consideration which is as to whether upon a hearing on a charge of the commission of direct contempt the person charged with such commission is entitled to urge that disqualification of the judge in and against whose court the offense was committed, under the provisions of Section 170 of the Code of Civil Procedure. Upon this question the authorities are practically uniform, not only in this state, but all over the country, to the effect that a person charged with the commission of a direct contempt and subject to be summarily punished therefor may not be heard to urge the disqualification of the judge about to adjudge the party guilty of such direct contempt.

The leading case in this country upon that subject is that of In re Terry, 128 U. S. 289, 9 S. Ct. 77, 80, 32 L. Ed. 405 (1888), wherein, after a review of many authorities, the Supreme Court of the United States held that the power immediately to punish an offender for a direct contempt is, and from the most ancient times has been, an inherent power, upon the recognition and enforcement of which "depend the existence and authority of the tribunals established to protect the rights of the citizens, whether of life, liberty, or property, and whether assailed by the illegal acts of the government or by the lawlessness or violence of individuals, * * * Blackstone thus states the rule: 'If the contempt be committed in the face of the court, the offender may be instantly apprehended and imprisoned, at the discretion of the judges without any further proof or examination.'" And the court further quotes from Bacon's Abridgment, title Courts, E, wherein it is laid down that: "Every court of record as incident to it, may enjoin the people to keep silence, under a pain, and impose reasonable fines, not only on such as shall be convicted before them of any crime on a formal prosecution, but also on all such as shall be guilty of any contempt in the face of the court, as by giving opprobrious language to the judge. * * * and immediately order them into custody." The federal tribunals have uniformly applied the rule to cases before them to the extent of holding that a person charged with a direct contempt is not entitled to apply for a change of venue on the ground of the bias and prejudice of the judge. Eilenbecker v. Plymouth, County, 134 U. S. 31, 10 S. Ct. 424, 33 L. Ed. 801; (1890); Bessette v. Conkey Co. 194 U. S. 324, 24 S. Ct. 665, 48 L. Ed. 997; Fleming v. U. S. (C.C.A.) 279 F. 613. The state courts in other jurisdictions have also, with like uniformity, declared it to be the rule as stated in State v. Bland, 189 Mo. 197, 88 S. W. 28, 31, 3 Ann. Cas. 1044, that "It is settled law that contempt cases are sui generis, that one

court may not try a case of contempt against another, that contempt proceedings are summary, that there is no constitutional right to trial by jury, and that no change of venue will lie." See also, in re Cooper, 32 Vt. 253; State v. Woodfin, 27 N. C. 199, 42 Am. Dec. 161; Ex parte McCown, 139 N. C. 95; 104; 51 S. E. 957; 2 L.R.A. (N.S.) 603; Coons v. State, 191 Ind. 580; 134 N. E. 194; 20 A.L.R. 900; Dale v. State, 198 Ind. 110; 150 N. E. 781; 49 A.L.R. 647; Noble v. Aasen, 10 N. D. 264, 86 N. W. 742; Tucker v. State, 35 Wyo. 430; 251 P. 460; State v. Shepherd, 177 Mo. 205; 76 S. W. 79, 99 Am. St. Rep. 624; State v. Clancy, 30 Mont. 193; 76 P. 10 and many others. (290 P. at 296, 297).

We adopt this rule that a claim of disqualification of a trial judge is not a proper plea where the contempt is direct and hold that appellant was not entitled to have his claim of disqualification heard in this case.

On the question of whether appellant was guilty of direct contempt we are of the opinion that the trial judge was justified in finding appellant guilty of contempt. In Neely v. State, 98 Miss. 816, 54 So. 315 (1911), in defining direct contempt it was pointed out "misconduct in the presence of the court which shows a disrespect of its authority or which obstructs or has a tendency to interfere with due administration of justice is contempt. Thus, any disorderly conduct or use of violence or threatening language to the court is contempt." In passing upon the question of whether the disorderly conduct of appellant constituted direct contempt, we recognize that the trial judge was in a much better position to determine this question than we are from the record. The trial judge not only heard the words spoken, the tone of the voice in which spoken, but also observed the actions of appellant before and after speaking the words. He was in a position to judge whether the appellant intended to show contempt for the court and its officers. Certainly this type of conduct, if permitted, would cause those observing it to lose respect for the court. It interfered with the business of

the court then being conducted. The disorderly conduct of appellant cannot be condoned.

We hold that the facts set out in the judgment of the circuit court are sufficient to show that appellant was guilty of direct contempt of that court and that part of such judgment is affirmed. However, the sentence imposed exceeded the maximum prescribed by statute for direct contempt and the judgment will be modified to impose a sentence of thirty days in the county jail. The judgment as modified will be affirmed.

AFFIRMED AS MODIFIED.

GILLESPIE, JONES, BRADY AND ROBERTSON, JJ., CONCUR.

(SUPREME COURT OF MISSISSIPPI)

Monday, April 6, 1970.

45,743

ROBERT JOHNSON

vs

STATE

This cause this day came on to be heard on the petition for a rehearing filed herein and this Court having sufficiently examined and considered the same and being of the opinion that the same should be denied doth order and adjudge that said petition be and the same is hereby denied.

Minute Book "BP". Page 96

(SUPREME COURT OF MISSISSIPPI)

Monday, April 27, 1970, Court Sitting.

45,743

ROBERT JOHNSON

vs.

STATE

ORDERED: The Motion to Stay Final Judgment is sustained upon appellant filing an appearance bond in the penal sum of $300.00 and a cost bond in the penal sum of $300.00 and provided a petition for certiorari is timely filed.

Minute Book "BP", Page 113

(Circuit Court of Grenada County, Mississippi)

[Received & Filed Feb. 9, 1970, Julia H. Kendrick, Clerk, Yvonne Burnhem, D.C.]

IN RE: CONTEMPT PROCEEDINGS AGAINST ATTORNEYS MARTHA M. WOOD, JON THAMES AND ROBERT J. KELLY.

The within matter came before the Court in open session at the regular January 1969 term thereof, and the Court finds and adjudicates as follows:

That on the first day of the within term of this Court, being Monday, January 27, 1969, this Court sentenced one Robert Johnson for a criminal contempt committed in the presence of the Court and while the Court was transacting business and in regular session. The said order and judgment is of record in Minute Book 11, page 281 and is herewith by reference made a part of this order and judgment. The said judgment of contempt speaks for itself and sets out all the facts and no oral statement was made by the Court except to quote from the judgment as it appears in the minutes.

On this February 6, 1969, while Court was in session and transacting business there came one Martha M. Wood, an attorney, and presented a lengthy petition or instrument which is termed a "Bill of Exceptions," the same having been signed by her and by attorneys Jon Thames and Robert J. Kelly. The Court having read the said instruments finds and adjudicates that the same is filled with calculated, deliberate falsehoods and misstatements of fact and is grossly disrespectful to this Court and contains language that no attorney should be permitted to use in an instrument filed in Circuit Court. Among other things, on page 3 thereof is contained the following language under Section 8, paragraph (d):

"Judge Perry stated that he had intended to give Respondent a hearing on the contempt charge (as the court files ordering him to appear and show cause prove), but that since Respondent had the audacity to go to federal court (and whether Judge Perry meant by that the original removal order or the affirmative jury suit or

both is not clear); he was not going to give him any hearing."

The Court states and adjudicates that nothing of that kind was said by the Court, that the said paragraph (d) is a falsehood from beginning to end, that no federal proceedings have influenced the Court in this matter and that said attorneys are guilty of gross infidelity to the Court and violation of their oaths as attorneys.

On page 5 of said instrument under paragraph (c), subparagraphs 1, 2, 3, and 4, are grossly disrespectful to the Court and constitute unprofessional conduct and contempt. Said paragraphs are as follows:

"(1) That contempt of court should not be tried before a judge who would be acting as judge, juror and prosecuting witness;

"(2) That Judge Perry is unable to sit fairly and impartially in the case of Respondent in that he is biased and prejudiced against Negroes and civil rights workers, and he knows that Respondent is a Negro and a civil rights worker;

"(3) That Judge Perry is unable to sit fairly and impartially in the case of Respondent in that he is biased and prejudiced against civil rights lawyers, and he knows that Respondent's attorneys are civil rights lawyers; and

"(4) That Respondent would have the right to and would call Judge Marshall Perry as an essential witness in his hearing for contempt."

Said instrument is ordered preserved as a part of the file in this cause, same being given the same cause number as the Robert Johnson contempt proceeding; which is No. 3581.

After reading said petition which was presented by the said Martha M. Wood in open Court and considering the within matter, this Court finds and adjudicates as follows:

For the conduct of said attorneys, as aforesaid, and the willful misrepresentation of facts as to what they allege occurred when all three of said attorneys were present in Court, for the disrespectful language to the Court, for the gross lack of fidelity to the Court and

their attitude as shown by said instrument, it is ordered and adjudged that each of said parties, Martha M. Wood, Jon Thames, and Robert J. Kelly, are adjudged in criminal contempt and each of them are sentenced to serve a term of sixty days in the County Jail and pay a fine of $300.00.

It is further ordered and adjudged that the Clerk of this Court be and he is hereby directed to send a certified copy of this order to the Chairman of the Complaints Committee of the Mississippi State Bar Association, and the said Committee is requested to take whatever action is deemed proper after an investigation thereof.

So ordered and adjudged in open Court, this the 6th day of February, 1969.

/s/ Marshall Perry
Circuit Judge

IN THE SUPREME COURT OF MISSISSIPPI

No. 45,743

[Received & Filed Jun. 18, 1970, Julia H. Kendrick, Clerk, Yvonne Burnhem, D.C.]

ROBERT JOHNSON, APPELLANT

vs.

STATE OF MISSISSIPPI, APPELLEE

MOTION TO CERTIFY RECORD AND FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Appellant, by his attorney, respectuflly petitions this Court to prepare, certify and transmit the record in this cause to the Clerk of the Supreme Court of the United States without prepayment of costs, in forma pauperis, and as grounds therefor would show:

1. On April 6, 1970, this Court denied appellant's Petition for Rehearing of the above-entitled case, in which appellant's conviction of contempt was affirmed as modified on March 9, 1970;

2. Appellant, by his attorneys Stephen W. Porter, Esquire and Richard B. Ruge, Esquire, of Washington, D. C. intends to file in the Supreme Court of the United States a Petition for a Writ of Certiorari to review the judgment denying appellant's Petition for Rehearing, together with a motion for leave to proceed in forma pauperis in that Court;

3. On April 27, 1970, this Court granted appellant's Motion for Stay of Judgment pending disposition of the Petition for a Writ of Certiorari to be filed in the Supreme Court of the United States;

4. Appellant accordingly moves this Court to prepare, certify, and transmit to the Clerk of the Supreme Court of the United States, a copy of the entire record that was before this Court including the Court's order denying appellant's Petition for Rehearing entered April 6, 1970; appellant's Petition for Rehearing filed herein; this Court's opinion and judgment of March 9, 1970, in which appellant's conviction was affirmed as modified; briefs filed by appellant and by respondent in this case; appellant's Bill of Exceptions; order adjudging Robert Johnson in contempt and providing punishment, etc., of Judge Marshall Perry dated January 27, 1969; appellant's Motion to Recuse filed in the Circuit Court on January 27, 1957; and all such other material constituting the entire record that was before this Court;

5. Appellant further moves this Court for leave to have said record certified and transmitted to the Clerk of the Supreme Court of the United States without prepayment of costs, and in forma pauperis. Appellant's affidavit in support of this motion is attached hereto.

Respectfully submitted,

/s/ Constance Iona Slaughter
CONSTANCE IONA SLAUGHTER
Lawyers' Committee for Civil
Rights Under Law
233 North Farish Street
Jackson, Mississippi 39201

Attorney for Appellant

IN THE SUPREME COURT OF MISSISSIPPI

No. 45,743

[Received & Filed Jun. 18, 1970, Julia H. Kendrick, Clerk, Yvonne Burnhem, D.C.]

ROBERT JOHNSON, APPELLANT

v.

STATE OF MISSISSIPPI, APPELLEE

AFFIDAVIT IN SUPPORT OF MOTION TO CERTIFY RECORD AND FOR LEAVE TO PROCEED IN FORMA PAUPERIS

I, Robert Johnson, being first duly sworn according to law, depose and say, in support of my motion to certify record and for leave to proceed without being required to prepay costs or fees:

1. I am the appellant in the above-entitled cause.
2. Because of my poverty I am unable to pay the costs or fees of certifying and transmitting the record in said cause.
3. I am unable to give security for same.
4. I believe that I am entitled to the redress I seek with respect to said cause.
5. The nature of said cause is briefly stated as follows:

On January 27, 1969, I was sentenced by Judge Marshall Perry of the Circuit Court of Grenada County, Mississippi, to four months' imprisonment for criminal contempt of Court alleged to have occured on January 23, 1967. On appeal, this Court modified the sentence to thirty days' imprisonment, the statutory maximum under Miss. Code 1942, § 1656 ("contempt of the court while sitting"). Petition for rehearing was denied by this Court on April 6, 1970. The basic ground asserted for reversal is that my conviction violated the due process clause of the Fourteenth Amendment to the United States Constitution, in that I was denied the right to

make legal objections to the show-cause petition citing me for contempt, the right to a hearing on the issue of my guilt or innocence, the right to present facts in mitigation of sentence, and the right to a hearing on the motion that Judge Perry recuse himself from judging the contempt charge.

/s/ Robert Johnson
ROBERT JOHNSON

STATE OF GEORGIA)
) SS
COUNTY OF FULTON)

Subscribed and sworn to before me this 8th day of June, 1970.

/s/ Alice M. Leuis
Notary Public

My commission expires June 23, 1972.

CERTIFICATE OF SERVICE

I certify that I have this day mailed, postage prepaid, a copy of the foregoing motion and supporting affidavit to Honorable Guy Rogers, Assistant Attorney General, New Capitol Building, Jackson, Mississippi, attorney for appellee.

This the 17th day of June, 1970.

/s/ Constance Iona Slaughter
CONSTANCE IONA SLAUGHTER

SUPREME COURT OF THE UNITED STATES

No. 5485, October Term, 1970

ROBERT JOHNSON, PETITIONER

v.

MISSISSIPPI

On petition for writ of certiorari to the Supreme Court of the State of Mississippi.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

January 11, 1971

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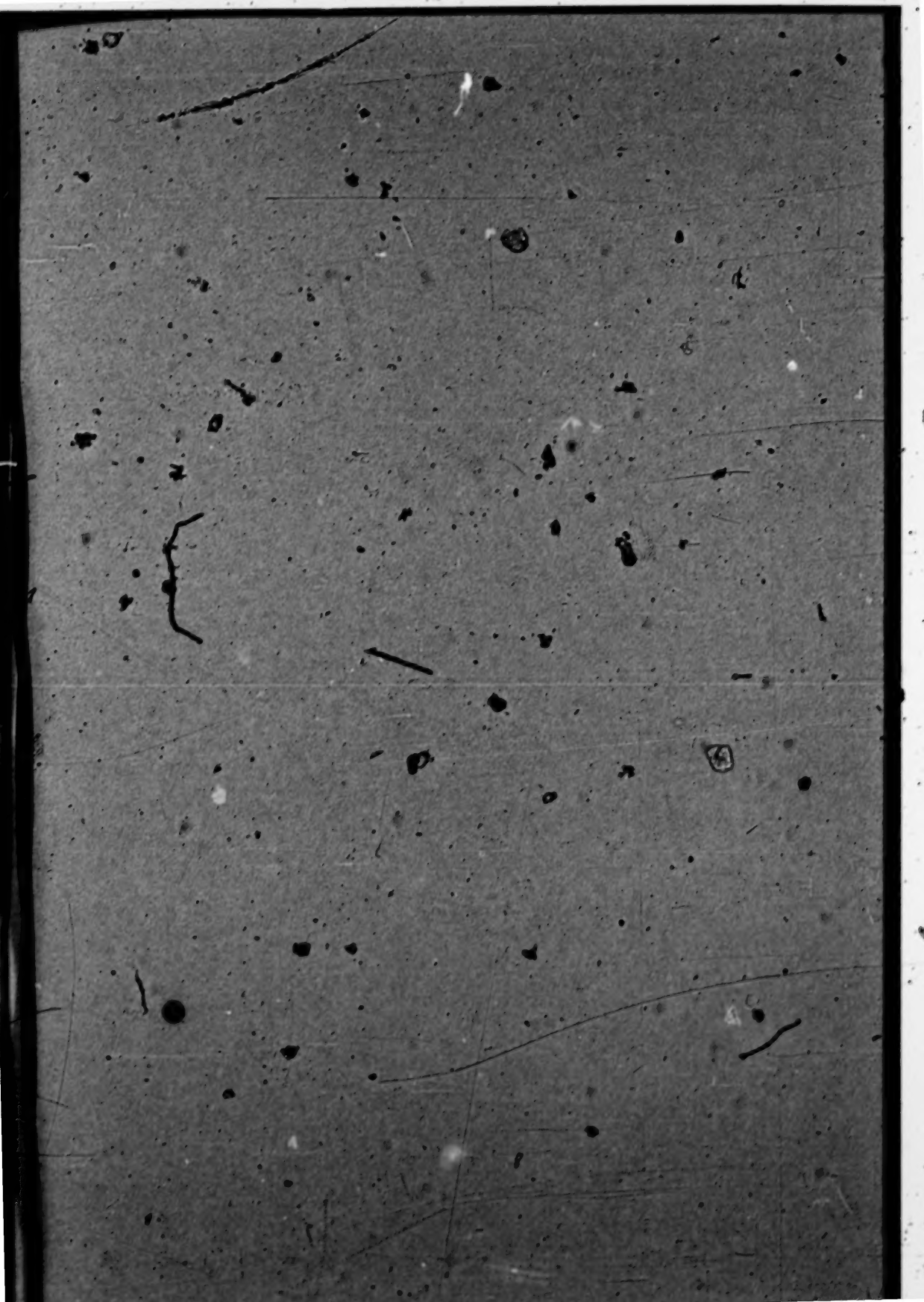

PETION FOR WRIT
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